

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>ARM &amp; RAGE, LLC</b>	)	MB Docket No. 22-122
	)	
WJBE(AM), Powell, TN	)	Facility ID No. 59693

**ORDER RE MOTION TO ENLARGE THE ISSUES**

**Issued: July 14, 2022**

**Released: July 14, 2022**

1. On March 21, 2022, the FCC’s Media Bureau released the *Arm & Rage* HDO designating the above-captioned proceeding for hearing.<sup>1</sup> The aim of this hearing proceeding is to determine whether Arm & Rage, LLC, which is the licensee of WJBE(AM), Powell, Tennessee and is controlled by Joseph Armstrong, is qualified to remain a Commission licensee. The *Arm & Rage HDO* delineated three issues for consideration:

- a. To determine the effects, if any, of Joseph Armstrong’s felony conviction on his qualifications and thus the qualifications of Arm & Rage, LLC to be a Commission licensee;
- b. To determine the effects, if any, of Arm & Rage, LLC’s failure to report the conviction by the April 1, 2017 due date, to upload required information to an online public inspection file, and to file timely ownership reports on its qualifications to be a Commission licensee; and
- c. To determine whether, pursuant to section 312 of the Communications Act of 1934, as amended, the license of Arm & Rage, LLC for WJBE(AM), Powell, Tennessee should be revoked.<sup>2</sup>

2. On June 15, 2022, Arm & Rage filed a motion to enlarge the issues in this proceeding to add two constitutional questions: (1) whether the character requirement of section 308(b) of the Communications Act survives heightened scrutiny under the First Amendment; and (2) whether revocation of the license for WJBE(AM) would violate either the First Amendment, under rational basis scrutiny, or the Equal Protection Clause.<sup>3</sup> Arm & Rage indicates that it raises these issues primarily to preserve them for possible judicial appeal. The FCC’s Enforcement Bureau filed an Opposition on July 8, 2022.<sup>4</sup> It contends that the additional legal issues proposed by Arm & Rage can only be addressed by appellate courts, and that the rule regarding enlargement is limited to factual issues. It further submits that Arm & Rage has not presented factual allegations sufficient to support its request.

<sup>1</sup> *Arm & Rage, LLC*, Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing, MB Docket No. 22-122, DA 22-285, 2022 WL 1077874 (MB Mar. 21, 2022) (*Arm & Rage HDO*).

<sup>2</sup> *Id.* at para. 24.

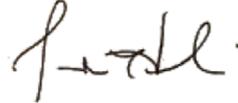
<sup>3</sup> Arm & Rage’s Motion to Enlarge the Issues, MB Docket No. 22-122 (filed June 15, 2022) (*Arm & Rage Motion*).

<sup>4</sup> Enforcement Bureau’s Opposition to Arm & Rage, LLC’s Motion to Enlarge the Issues, MB Docket No. 22-122 (filed July 8, 2022) (*EB Opposition*). The Bureau was granted an extension of the filing deadline by *Arm & Rage, LLC*, Order Granting Extension of Time, MB Docket No. 22-122, FCC 22M-19 (ALJ June 17, 2022).

3. Section 1.229(a) of the Commission's rules, 47 CFR § 1.229(a), permits a party in a hearing proceeding to file a motion to enlarge, change, or delete issues.<sup>5</sup> The motion "shall contain specific allegations of fact sufficient to support the action requested."<sup>6</sup> As the Enforcement Bureau indicates, the Commission has determined that Section 1.229 concerns enlargement of factual, rather than legal, issues.<sup>7</sup> The additional issues posited by Arm & Rage are purely legal. Regarding whether the character requirement of the Communications Act would require heightened constitutional scrutiny, Arm & Rage acknowledges that that issue has been foreclosed by the District of Columbia Circuit.<sup>8</sup> With respect to the second issue, whether revocation of its licenses is contrary to the First Amendment under rational basis scrutiny, or the Equal Protection Clause, Arm & Rage contends that a licensee cannot be deprived of a license or employment for irrational reasons or because of irrationally discriminatory treatment. The character requirement, as applied by the Commission's *1990 Character Policy Statement*,<sup>9</sup> has been upheld by the District of Columbia Circuit as a rational means to evaluate whether someone possesses the requisite character to hold an FCC license.<sup>10</sup> Nor has Mr. Armstrong been treated in a discriminatory manner; it is the Commission's usual practice to initiate a hearing proceeding when a licensee has been convicted of a felony.<sup>11</sup> The factors cited by Arm & Rage to support its argument that revocation would be unconstitutional are the type that will ultimately be considered in evaluating whether revocation is appropriate, if they are properly raised in its Responsive Case. As a result, the Presiding Judge finds that Arm & Rage has not alleged sufficient facts to support enlargement of the issues designated for hearing in this matter.

4. Accordingly, **IT IS ORDERED** that Arm & Rage's Motion to Enlarge the Issues, filed on June 15, 2022, in the above-captioned proceeding, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin  
Administrative Law Judge

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<sup>5</sup> The rule typically requires that the motion be filed within 15 days after Federal Register publication of the order designating the matter for hearing. During the initial status conference in this proceeding, however, the Presiding Judge indicated that Arm & Rage's motion was due on or before June 15, 2022. *Arm & Rage, LLC*, Order Summarizing Initial Status Conference, MB Docket No. 22-122, FCC 22M-14 (ALJ May 18, 2022).

<sup>6</sup> 47 CFR § 1.229(d).

<sup>7</sup> EB Opposition at 3 (citing *Jerry Szoka*, CIB Docket No. 98-48, FCC 98M-113 (ALJ 1998) at n.1, *aff'd*, *Jerry Szoka*, 14 FCC Rcd. 9857, 9861 (1999), *recon. denied* 14 FCC Rcd. 20147 (1999)).

<sup>8</sup> Arm & Rage Motion at 1 (citing *Ruggiero v. FCC*, 317 F.3d 239 (D.C. Cir. 2003)).

<sup>9</sup> *Policy Regarding Character Qualifications in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252 (1990) (*1990 Character Policy Statement*), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *further recon. granted in part*, 7 FCC Rcd 6564 (1992).

<sup>10</sup> *Contemporary Media v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) ("We see nothing irrational in the conclusion that a violation of the criminal laws is relevant to [evaluating propensity to obey the law] and to the issue of character in general").

<sup>11</sup> *Auburn Network, Inc.* MB Docket No. 21-20, FCC 22D-01 (ALJ May 9, 2022) at para. 20.